(1)

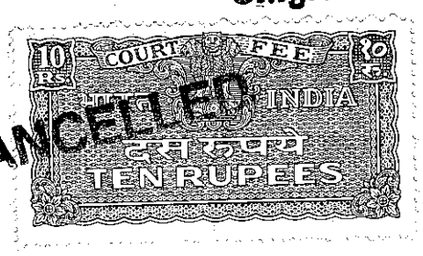
IN THE HIGH COURT OF JUDICATURE IN CHHATTISGARH AT BILASPUR

M.A.No.: 669 / 2006

(3) **Single Bench**

APPELLANT :
PLAINTIFF

UTTAM CHAND LUNIYA,
Aged about 50 years,
S/o. Late Shri Pannalal Luniya,
R/o.: Halwai Lane, Rajnandgaon,
Distt.: Rajnandgaon (C.G)



Versus

ESPONDENTS :
EFENDANTS

(1) ROSHANLAL VERMA,
Aged 40 years, S/o.: Guha Ram Verma,
R/o.: Village – Sahaspur, Dalli RI Circle,
Ghumka, Tah.& Distt.: Rajnandgaon (C.G)

(2) STATE OF CHHATTISGARH,
Through the COLLECTOR,
Rajnandgaon (C.G)

P.R. No. 2006/06
Presented by Shri V. P. Yadav Adv.
dated 14/7/06

APPEAL UNDER ORDER 43 R (1) (r) CODE OF CIVIL PROCEDURE

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AFR
04/10/06
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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

04.10.2006

Shri Manoj Paranjpe, learned counsel for the appellant.
Shri Anand Shukla, learned counsel for the respondent No.1.

With the consent of the parties, the mater is heard finally.

The appellant/plaintiff has preferred this appeal against the order dated 6.5.2006 passed in Civil Suit No. 2-A/06 by First Additional District Judge, Rajnandgaon whereby the application of the appellant/plaintiff under Order 39 Rules 1 & 2 of the Code of Civil Procedure for grant of temporary injunction has been rejected. (Parties hereinafter shall be referred to as per their description before the trial Court).

The plaintiff filed a suit for specific performance of the contract agreement with respect to the suit land with the averments that plaintiff and defendant No. 1 entered into a contract agreement dated 15.7.2003 to sell the suit land bearing Khasra No. 218/1, area 1.82 acres situated at village Sahaspur, for a consideration of Rs. 76,000/-. A subsequent agreement was again entered into between the parties on 30.7.2003 to sell the land bearing Khasra No. 218/2, area 1.81 acres situated at village Sahaspur, for a consideration of Rs. 76,000/-. The plaintiff has paid the full consideration at the time of said agreements and the defendant No. 1 promised to execute the sale deed in the name of the persons as directed

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

by the plaintiff and also handed over the original *Rin Pustika* to the plaintiff. It is also averred that the plaintiff is already in possession of the suit land as the same was delivered to him at the time of agreements as a part performance of the contract, however, defendant No. 1 did not execute the sale deed despite being called upon to do the same vide legal notices and has falsely denied the transaction. The defendants are contemplating to transfer the property and therefore, in the aforesaid circumstances, they be restrained from alienating or otherwise creating third party interest over the suit property.

The defendant No. 1 in reply to the application for temporary injunction, denied the execution of the sale deed and further denied the receipt of any consideration. He admitted that he advertised in the newspaper that he proposed to sell the land and claimed that he has every right to transfer his own property.

It is admitted fact that till the impugned order rejecting the application of the plaintiff for temporary injunction has been passed by the trial Court, the plaintiff did not produce original agreements of sale in the Court despite being called upon for the same. The Court below considering the pleadings of the respective parties and further considering

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the fact that the plaintiff has not filed the original agreements with respect to transfer of the suit property even after seeking several adjournments for filing the same, has arrived at the conclusion that the plaintiff has failed to prove a prima facie case in his favour and accordingly dismissed the application for temporary injunction by the impugned order.

Learned counsel for the appellant relying upon the judgment of M.P. High Court reported in 1978 M.P.L.J. 419 in the matter of Shankarlal Debiprasad Rathore Vs. State of M.P. and others, argues that the only consideration for grant of temporary injunction is existence of prima facie case, balance of convenience and maintenance of status-quo and if the plaintiff is in a position to show that there is a serious question to be tried and the disputed questions of facts are difficult questions of law, it should be left to be decided at the conclusion of the trial.

Further relying upon the judgment of the Supreme Court delivered in the matter of Dhariwal Industries Ltd. and another Vs. M/s M.S.S. Food Products reported in 2005 AIR SCW 1241 it is argued that the documents produced by the plaintiff is forged or got up documents, cannot be decided at the interlocutory stage and the orders of temporary injunction should be passed on the basis of documents produced by the respective parties.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

On the other hand, learned counsel for defendant No. 1 relying upon the judgment in the matter of Radha Kishan Vs. Lokendra and others reported in 2000(2) M.P.H.T. 115 (NOC) argued that it has been held in the above cited case that where the suit is based on a document of agreement for sale of the land in question and a prayer for injunction restraining the defendant from interfering with the suit property is made on the basis of photocopy of the said agreement, the order of temporary injunction cannot be granted and there was no prima facie documentary evidence which would persuade the Court to grant equitable and discretionary relief of injunction at this stage.

Reliance is also placed on the order reported in 1982 (1) M.P.W.N. (176) in the matter of Gariba Vs. Hatimkhan wherein it has been held that the Order 39 Rules 1 & 2 is an equitable relief and where the claim is based on suspicious document, the Court will refrain from giving any relief.

I have heard learned counsel for the respective parties and have perused the impugned order.

From the impugned order it reflects that the plaintiff prayed for several adjournments to file the original agreements of sale of the suit land

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आदेश पत्रक (पूर्वानुबद्ध)

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on one pretext or other. However, both the original agreements of sale could not be filed till passing of the impugned order.

In the matter of Shankarlal Rathore (supra) the plaintiff was required to vacate the suit accommodation and considering the comparative inconvenience that was likely to be suffered by the plaintiff in that case, the Court granted equitable relief of temporary injunction in favour of the plaintiff as the balance of convenience was in favour of granting temporary injunction to the plaintiff. Similar is the situation in the matter of Dhariwal Industries Ltd (supra) where the plaintiff of that case could establish his case by filing certain documents regarding the mark of Manikchand in respect of Pan Masala, Gutkha and Supari. In the above case, the allegation was that the documents filed by the plaintiff was forged, fabricated and got up which was seriously disputed by the plaintiff. However, in the instant case there is no dispute that the original agreements of sale have not been filed by the plaintiff and the relief of temporary injunction has been prayed for solely on the ground of photocopy of the alleged agreements. There is no explanation on the part of the plaintiff for not filing the original agreements, on the contrary, it appears that the plaintiff sought time for producing the same but ultimately could not produce and in these circumstances, the Court below has

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

rejected the application for temporary injunction by recording a finding that the plaintiff does not have a prima facie case which entitles him to equitable relief of temporary injunction.

For the foregoing reasons, this Court is of the considered opinion that the finding of the Court below rejecting the application of the plaintiff for grant of temporary injunction, is based on correct reasoning. Thus, relying on the judgments in the matter of Radha Kishan Vs. Lokendra (supra) and Gariba Vs. Hatimkhan (supra), the instant appeal deserves to be dismissed at the admission stage itself and it is accordingly dismissed.

Sd/-
Dhirendra Mishra
Judge

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